IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 78 of 2001
(Old No. 1908 /1994)

Jasbir Singh & another

Versus

State

Date of decision :- 12-08-05

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- August 12, 2005. Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the Judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.78 of 2001

{Old No.1908 of 1994}

1. Jasbir Singh @ Yashbir Singh Verma
   S/o Sri Tarachand
2. Kalam Singh
   S/o Sri Baroo
   Both R/o Mohammadpur Jeth
   P.S. Manglaur
   District Haridwar ……Applicants

Versus

State of Uttaranchal ……Respondent

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Vivek Shukla learned counsel for the applicants and Sri Amit Bhatt learned A.G.A.

2. The petition under section 482 Cr.P.C. has been filed to set aside the summoning order dated 22.3.1994 passed by the learned Judicial Magistrate, Roorkee, Haridwar, in case crime No.245-A/1993 under sections 147, 148, 149, 307, 323 I.P.C. police station Manglaur, District Haridwar.

3. Brief facts of the case are that an FIR was lodged by Manoj Kumar against the applicants & four others on 23.9.1993 at police station Manglaur in case crime No.245-A/1993 under section 147, 148, 149, 307, 323 I.P.C. It has been alleged that four persons namely Nakul, Harbir, Islam and Anuj received firearm injuries and one-Manoj Kumar received injury caused by Lathi.
During the investigation, it was found that the applicants were falsely implicated as they were not present at the time of incident. As such, the chargesheet was submitted against Vikram Singh, Pawan, Karm Veer and Ravi. Thereafter, the complainant-Manoj Kumar filed a protest petition in the court of Judicial Magistrate,

Roorkee on 2.3.1994. In support of his protest petition, he also filed the affidavit of witnesses, namely Jaipal, Jasbir and Surendra Pal. After considering the entire evidence on record, the learned Magistrate rejected the final report which was submitted by the I.O. and summoned the applicants under section 147, 148, 149, 323, 307 I.P.C. vide its order dated 22.3.1994. Feeling aggrieved by this, the applicants preferred this petition.

4. Perusal of the order of the trial court clearly reveals that Surender Pal, Manoj Kumar and Anuj have stated in their evidence that the applicants participated in the commission of offence, but the I.O. has found that the applicants were not present at the time of incident. No evidence has been adduced by the applicants on this point. However, the plea of alibi has been taken by the accused-applicants before the I.O. The ocular testimony as stated in the statement of the witnesses clearly shows the participation of the applicants in the commission of offence. As such, the learned Magistrate was justified to summon the applicants.

5. In support of the protest petition, Manoj Kumar also filed certain affidavits of witnesses, namely Jaipal, Jasbir and Surendra Pal. However, the trial court has not considered the same. It is well settled position of law that the affidavits cannot be considered at the time of the protest petition. The learned Magistrate was aware about the legal position, hence he has not considered these affidavits.

6. The learned counsel for the applicants contended that the co-accused, namely Karam Veer, Ravi, Pawan and Vikram Singh have already been acquitted by the

Ist Addl. Sessions Judge, Haridwar in S.T. No. 44/1998 vide judgment and order dated 2.8.1999. It was also pointed out that the prosecution witnesses have been declared hostile and the participation of the applicants have been indicated in this case. The copy of the aforesaid judgment has been filed alongwith the affidavit. It reveals that the witnesses had been declared hostile.

7. In view of the acquittal of the co-accused, it would not be proper to send the matter again for trial. The incident took place in the year 1993 and the evidence before the court below reveals that the participation of the applicants has not been indicated in this matter. As such, the petition is liable to be allowed.

8. The petition is allowed. Order dated 22.3.1994 passed by the learned Judicial Magistrate, Roorkee, Haridwar in case crime No.245-A/1993 under sections 147, 148, 149, 307, 323 I.P.C. police station Manglaur, District Haridwar is set-aside.

9. The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 12.08.2005

LSR